



DIVERSION/DISCIPLINE COMMITTEE MEETING

AGENDA

**Hilton Los Angeles Airport Hotel
5711 West Century Blvd.
Los Angeles, CA 90045**

May 8, 2013

Wednesday, May 8, 2013 – 1:00 p.m. to 2:00 p.m.

9.0 Review and Approve Minutes:

- March 6, 2013

9.1 Complaint Intake and Investigations Update

9.2 Discipline and Probation Update

9.3 Enforcement Statistics

9.4 Diversion Program Update and Statistics

- 9.4.1 Diversion Evaluation Committee Members

9.5 Consideration of Enforcement-Related Regulation Proposals to Amend Title 16

- California Code of Regulations, Article 1, Section 1403, Delegation of Certain Functions
- California Code of Regulations, Article 2, Section 1410, Application
- California Code of Regulations, Article 4, Section 1441, Unprofessional Conduct
- California Code of Regulations, Article 4, Section 1443.6, Required Actions Against Registered Sex Offenders
- California Code of Regulations, Article 4, Section 1444.5, Disciplinary Guidelines

9.6 Public Comment for Items Not on the Agenda

NOTICE:

All times are approximate and subject to change. Items may be taken out of order to maintain a quorum, accommodate a speaker, or for convenience. The meeting may be canceled without notice. For verification of the meeting, call (916) 574-7600 or access the Board's Web Site at <http://www.rn.ca.gov>. Action may be taken on any item listed on this agenda, including information only items.

Public comments will be taken on agenda items at the time the item is heard. Total time allocated for public comment may be limited.

The meeting is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting the Administration Unit at (916) 574-7600 or email webmasterbrn@dca.ca.gov or send a written request to the Board of Registered Nursing Office at 1747 North Market #150, Sacramento, CA 95834. (Hearing impaired: California Relay Service: TDD phone # (800) 326-2297. Providing your request at least five (5) business days before the meeting will help to ensure the availability of the requested accommodation.

Board members who are not members of this committee may attend meetings as observers only, and may not participate or vote. Action may be taken on any item listed on this agenda, including information only items. Items may be taken out of order for convenience, to accommodate speakers, or maintain a quorum.



DIVERSION/DISCIPLINE COMMITTEE MINUTES

DATE: March 6, 2013

SITE: Four Points by Sheraton
4900 Duckhorn Drive
Sacramento, CA 95834

MEMBERS PRESENT: Cynthia Klein, RN, Chair
Michael Jackson, BSN, RN
Raymond Mallel

STAFF PRESENT: Louise Bailey, M.Ed., RN, Executive Officer
Stacie Berumen, Assistant Executive Officer
Beth Scott, Deputy Chief, Discipline, Probation & Diversion
Kathy Hodge, Deputy Chief, Complaint Intake and Investigations
Carol Stanford, Diversion Program Manager

The Chair called the meeting to order at approximately 1:07 p.m.

8.0 REVIEW AND APPROVE MINUTES:

Approve/Not Approve: Minutes of January 9, 2013

M/S/C: Motion by Michael Jackson, Second by Raymond Mallel, Committee approves January 9, 2013 meeting minutes.

8.1 Complaint Intake and Investigations Update

PROGRAM UPDATES

COMPLAINT INTAKE:

Staff

We held interviews for one open Office Technician position and hope to make a selection within the next week or so. Due to lack of competitive compensation, we have been unable to recruit an NEC to cover the entire Enforcement Division.

Program

Everyone in Complaint Intake has been trained on BreEZe. The training was very high level and addressed only how to navigate the screens, not how to incorporate business processes.

As yet, we do not have a new BreEZe “go live” date but anticipate it could be within the next couple of months. To ensure the least amount of unit disruption when the system is implemented, all Complaint Intake unit staff met on February 20 to go over BreEZe system functionality. We mapped the business processes and system interaction and identified new procedures required to support unit tasks. Staff has been instructed to practice using the system two hours each day for the next week, with additional hands on group training and procedure writing sessions planned in the near future.

Having procedures in place and staff fully familiar with their new business processes is essential and has taken top priority. Therefore, as we turn our full attention to preparing for the new system, complaint intake productivity will suffer greatly - possibly for the next several weeks, thereby creating large backlogs.

Statistics

For fiscal year 2012/13, as of January 31, 2013, we received 4,544 complaints. Projected out, it is estimated we will receive approximately 7,790 complaints by the end of this fiscal year. The average time to close a complaint not referred to discipline went from 164 days in July 2012 to 116 days.

INVESTIGATIONS:

Staff

Northern – We hired one Special Investigator position for the Fresno/Bakersfield region. She started on January 22, 2013. The North is now fully staffed with seven special investigators.

Southern – We have one open investigator position for the LA/Orange County area and are holding interviews the week of March 4th. There will be another investigator position opening in the near future for the LA area.

Due to the number of So Cal cases and the difficulty in recruiting qualified Special Investigator candidates, we were approved to keep our retired annuitant until the end of the fiscal year.

Program

Both DOI and BRN Investigations have issued subpoenas to facilities unwilling to give us documents for our investigations. Some of these facilities continue to be non-compliant with subpoenas and we have forwarded them to the Attorney General’s office to obtain court orders to enforce compliance.

In preparation for potential drug testing, our So Cal investigators completed Advanced Roadside Impaired Driving Enforcement (ARIDE) training, given free through the California Highway Patrol, on January 29-30, 2013 and No Cal is scheduled to attend the same training in Folsom, CA on March 7-8. Our plan is to use the mobile testing services from First Lab when it becomes available through the BRN Probation Unit.

Statistics

The following are internal numbers (end of month) across all investigators not broken out on the performance measurement report. Total cases unassigned reflect the loss of 32 cases pulled and sent back to DOI for investigation.

BRN Investigation Unit	Jan 2013	Feb 2013	Mar 2013	Apr 2013	May 2013	Jun 2013
Total cases assigned	268					
Total cases unassigned (pending)	135					
Average days to case completion	293					
Average cost per case	\$4,223					
Cases closed	19					

As of January 31, 2013, there were 677 pending DOI investigations.

Please review the enforcement statistics reports in 8.3 for additional breakdown of information.

8.2 Discipline and Probation Update

PROGRAM UPDATE

Staff

The Probation Unit is fully staffed with six monitors and one Office Technician (OT).

The Discipline Unit is fully staffed with 5 case analysts, 2 legal support analysts, 1 cite and fine analyst and 2 OTs.

The Discipline and Probation Programs lose 160 hours per month of staff time due to state mandated furloughs.

Program – Discipline

Discipline will continue to audit charges from the Attorney General's (AG) offices to determine if the BRN is being charged appropriately. Our BRN research analysts also review AG charges seeking out anomalies for review.

The total amount of open discipline cases are 1,836 with an average case load per analyst at 367. There are approximately 1,933 cases at the AG's office.

The Legal Support Analyst started preparing default decisions for the Sacramento Office effective October 1, 2012. The Legal Support Analysts have been working under the direction of DCA Legal Counsel to prepare default decisions for the Oakland and San Francisco AG Offices for approximately two years. We will continue to work with the AG to expand this process to include the San Diego and Los Angeles offices.

Our Legal Support Analyst and staff have been busy processing Decisions. For fiscal year 2013 (July 1, 2012 through February 20, 2013):

Decisions Adopted by Board	830
Pending Processing by legal support staff	76

Staff continues to increase its usage of citation and fine as a constructive method to inform licensees and applicants of violations which do not rise to the level of formal disciplinary action.

The BRN continues to issue citations for address change violations pursuant to the California Code of Regulations §1409.1. To date we have ordered \$26,700 for failure to update address change citations. The BRN website was updated with a reminder of the address change requirement.

We have issued more citations and received more payments than any time in BRN history.

Citation information below reflects the work for fiscal year 2013 (July 1, 2012 through February 20, 2013).

Number of citations issued	476
Total fines ordered	\$178,100.00
Fines paid (amounts include payments from fines issued in prior fiscal year)	\$274,350.00
Citations pending issuance	496

The Discipline Unit continues to work on the NURSYS discipline data comparison project (SCRUB). The status of the documents reviewed:

Referred to the Attorney General	676
Pleadings Received	539
Default Decisions Effective	222
Stipulated Decisions Effective	161
Referred to Cite and Fine	64
Closed Without Action (Action taken by CA (prior to 2000) but not reported to Nursys or information approved at time of licensure)	922

Program – Probation

On February 21 and 22, staff attended the Medical and Pharmacy Boards “Joint Forum to Promote Appropriate Prescribing and Dispensing” a free training offered in San Francisco.

The case load per probation monitor is approximately 121.

AG COSTS:

As of January 31, 2013, the BRN has expended \$1,298,620 at the AG’s office on the NURSYS SCRUB cases.

Statistics - Discipline

Please review additional statistical information which can be found under item 8.3.

Statistics – Probation

Below are the statistics for the Probation program from July 1, 2012 to February 19, 2013

Probation Data	Numbers	% of Active
Male	179	24%
Female	546	76%
Chemical Dependency	372	52%
Practice Case	212	28%
Mental Health	1	>1%
Conviction	140	19%
Advanced Certificates	72	9%
Southern California	364	51%
Northern California	361	49%
Pending with AG/Board	90	12%
License Revoked	18	2%
License Surrendered	53	6%
Terminated	6	>1%
Completed	27	2%
Active in-state probationers	725	
Completed/Revoked/Terminated/ Surrendered	104	
Tolled Probationers	217	

8.3 Enforcement Statistics Update

The committee reviewed the statistics for the Enforcement Division.

8.4 Diversion Program Update and Statistics

Program Update

The Diversion Program has filled their vacant Office Technician Position with Kim Poston. She was most recently employed as a health aid at an elementary school for 6 years. This is her first state service appointment. Due to lack of support staff and furlough hours the backlog of complaints has increased. She has diligently worked to help alleviate the backlog and has processed over 200 complaints since she began her employment with the BRN at the end of December. The Program is now processing January complaints and should be totally caught up within the next 30 days.

On February 21 and 22nd, the Program Manager, Carol Stanford and the Deputy Chief of Discipline, Probation and Diversion, Beth Scott attended the California Medical and Pharmacy Boards' Joint Forum to Promote Appropriate Prescribing and Dispensing. The topics included, but were not limited to: information relating to public policy surrounding prescription drug abuse, prescription drug trafficking, abuse and diversion of narcotics, California's Prescription Drug Monitoring Program (CURES) and what to do when your patients are addicted. There

were guest speakers from the White House, Drug Enforcement Agency, Criminal Justice Department, District Attorney and Attorney General's Office, the Emergency Medical Services, hospitals and the Medical and Pharmacy Boards. The information obtained was very educational. Training materials from the forum will be available on the Medical Board and Pharmacy Board's website at a later date.

Due to the prescription drug abuse epidemic and changes in many of the illegal drugs used by healthcare professionals, the Department of Consumer Affairs' (DCA) Diversion Program Managers along with DCA's legal staff met with Maximus and approved a more extensive and updated drug testing protocol. The new panel has been in place for a couple months and the program is monitoring the results to determine if there are any increases in positive tests. The panel change brought about a slight increase in testing fees which had already been accounted for in the DCA contract.

Contractor Update

Maximus is recruiting for a vacant clinical case manager position. As our Diversion Program numbers increase, this position becomes more vital. They are aggressively advertising for a qualified nurse to fulfill this vacant position.

Maximus is also contracted to do continual outreach presentations in the healthcare community. This is sometimes done in conjunction with BRN staff and has increased public awareness about the Diversion program to nursing programs and hospital staff personnel. Some of the comments on the evaluations the program has been receiving as a result of these presentations are, "Wonderful presentation." "Excited to hear there is a program like this for healthcare professionals." "Perhaps if there were a website or more advertisement out to the healthcare industry more healthcare professionals could utilize the program." "Thanks for presenting this area...often overlooked..." This is a major component of the Maximus contract which we look forward to expanding in the near future.

Diversion Evaluation Committees (DEC)

Four nursing students from Samuel Merritt College attended the Diversion Evaluation Committee's open session in the Bay Area. The committee members discussed the Diversion Program with the students and explained the Board's disciplinary processes. BRN staff and the committee were able to answer the students' questions and help them distinguish the difference between Diversion and Probation.

There are currently four vacancies at this time: one public, one registered nurse, and two physician positions. Recruitment efforts continue.

Statistics

The Statistical Summary Report for December 2012 and January 2013 is attached. As of January 31, 2013, there were 1,736 successful completions.

8.4.1 Diversion Evaluation Committee Members

BACKGROUND:

In accordance with B&P Code Section 2770.2, the Board of Registered Nursing is responsible for appointing persons to serve on the Diversion Evaluation Committees. Each Committee for the Diversion Program is composed of three registered nurses, a physician, and a public member with expertise in chemical dependency and/or mental health.

TRANSFER

Below is the name of the DEC member who would like to transfer from his appointed DEC to another DEC for personal reasons.

<u>NAME</u>	<u>TITLE</u>	<u>From DEC</u>	<u>NO</u>	<u>To DEC</u>	<u>NO</u>
Scott Reiter,	Physician	Ontario	9	L.A.	3
Barry Solof,	Physician	San Jose	7	Ontario	9

Approve/Not Approve: Transfer of Diversion Evaluation Committee Member

M/S/C: Committee recommends board approve appointment.

8.4.2 Diversion Evaluation Committee Members - Resignation

BACKGROUND:

In accordance with B&P Code Section 2770.2, the Board of Registered Nursing is responsible for appointing persons to serve on the Diversion Evaluation Committees. Each Committee for the Diversion Program is composed of three registered nurses, a physician, and a public member with expertise in chemical dependency and/or mental health.

RESIGNATION

Diversion Evaluation Committee Member Resignation for personal reasons.

<u>NAME</u>	<u>TITLE</u>	<u>DEC</u>	<u>NO</u>
Romana Zvereva,	Physician	Los Angeles	3
Glenn Wedeen	Physician	Ontario	9

8.5 Public Comment for Items Not on the Agenda

No public comments received.

The Chair adjourned the committee meeting at approximately 1:50 p.m.

Approved: _____

DRAFT

BOARD OF REGISTERED NURSING
Diversion/Discipline Committee
Agenda Item Summary

AGENDA ITEM: 9.1

DATE: May 8, 2013

ACTION REQUESTED: Information Only: Complaint Intake and Investigations Update

REQUESTED BY: Stacie Berumen, Assistant Executive Officer

BACKGROUND:

PROGRAM UPDATES

COMPLAINT INTAKE:

Staff

Unfortunately, we are again recruiting for the open Office Technician position and hope to hold interviews mid-May. We have one full-time Staff Services Analyst dedicated 100% to BreEZe.

Due to lack of competitive compensation, we have been unable to recruit an NEC to cover the entire Enforcement Division.

Program

Of the 147,000 nurses licensed prior to 1990 who were required to retroactively fingerprint between 2009 and 2011, 1,222 failed to provide proof of fingerprint submission. These licenses were inactivated and are currently being referred to Complaint Intake for issuance of a citation and fine for non-compliance.

Our BreEZe “Go Live” date scheduled for May 13th has been delayed. A new date has yet to be determined by DCA Executive staff in conjunction with the vendor. We continue to document business processes. We are experiencing backlogs in complaint processing since we are essentially down two full-time staff positions. We also anticipate a slow down once BreEZe goes live due to the increase in system response times and difficulty identifying correct records.

Statistics

For fiscal year 2012/13, as of March 31, 2013, we received 5,726 complaints. Projected out, it is estimated we will receive approximately 7,633 complaints by the end of this fiscal year. The average time to close a complaint not referred to discipline went from 164 days in July 2012 to 127 days.

INVESTIGATIONS:

Staff

Southern – We have one open investigator position for the LA area and plan to hold interviews in early June.

Due to the number of So Cal cases and BreEZe, we are requesting approval to keep our retired annuitant.

Program

We continue to have issues obtaining documents, primarily from Kaiser North. In addition, we are now being told we must issue subpoenas in order to interview staff and managers. Failure of the facility to comply has and will continue to result in referrals to the Attorney General's office to obtain court orders to enforce compliance. This is causing major delays in case completion timeframes exceeding 4 months. We plan to go forward with legislation to assist the investigators in obtaining documents and gaining subject and witness cooperation.

In addition, both DOI and BRN investigators are unable to obtain documents from federal facilities, such as VA Hospitals, military hospitals, and hospitals located on Indian reservations, since they do not honor state issued subpoenas. Regarding a case we are working at an Army facility, the facility Risk Manager referred us to a Judge Advocate General (JAG) to gain clearance to obtain documents pertinent to our investigation. In addition to asking for assistance for this case in particular, we have also asked how we may, in the future, work with the Department of Defense to obtain necessary documents from all branches of the military. Our hope is that our efforts will also benefit other DCA departments having the same issue, however, to date, the JAG has been unresponsive to our email and voicemail.

On April 17, Investigations management had a meet and greet with the Drug Enforcement Agency (DEA) in Carlsbad, CA. We discussed how we can collaborate on cases that overlap in instances where we regulate the same subjects, i.e., Nurse Practitioners and Nurse Practitioners with furnishing numbers. We were able to clarify the correct business process the DEA should take when they identify one of our nurses prescribing illegally during their investigations and discussed ways we can work together to proactively identify illegal activity. We now have contacts we can work with not only in San Diego, but also in Sacramento, Los Angeles, and San Francisco.

On April 18, Investigations management had a meet and greet with the staff and nurse evaluators at the California Department of Public Health (CDPH) in San Diego, CA. We gave them an overview of the Investigations unit and how we process complaints. We discussed the types of complaints they should be referring to us and the information that can help us complete our cases timely and more effectively. The exchange was mutually beneficial and has provided a conduit for contacts and resources. The CDPH San Diego office has been extremely accommodating by allowing our investigators to use their facilities for subject and witness interviews.

We are scheduled to attend the CDPH Field Manager's meeting in Northern CA on June 18 to have a similar meet and greet and exchange of information.

Statistics

The following are internal numbers (end of month) across all investigators not broken out on the performance measurement report.

BRN Investigation Unit	Jan 2013	Feb 2013	Mar 2013	Apr 2013	May 2013	Jun 2013
Total cases assigned	268	341	272			
Total cases unassigned (pending)	135	136	123			
Average days to case completion	293	311	261			
Average cost per case	\$4,223	\$5,421	\$3,215			
Cases closed	19	13	32			

As of March 31, 2013, there were 616 pending DOI investigations.

Please review the enforcement statistics reports in 9.3 for additional breakdown of information.

NEXT STEP:

Continue filling vacant positions. Continue to review and adjust internal processes and monitor statistics for improvement in case processing time frames. Prepare for BreEZe implementation. Follow directions given by committee and/or board.

FINANCIAL IMPLICATION, IF ANY:

None at this time. Updates will be provided at each DDC meeting for review and possible action.

PERSON TO CONTACT:

Kathy Hodge, RN
Deputy Chief, Complaints and Investigations
(916) 574-7678

BOARD OF REGISTERED NURSING
Diversion/Discipline Committee
Agenda Item Summary

AGENDA ITEM: 9.2

DATE: May 8, 2013

ACTION REQUESTED: Information Only: Discipline and Probation Update

REQUESTED BY: Stacie Berumen, Assistant Executive Officer

BACKGROUND:

PROGRAM UPDATE

Staff

The Probation Unit is fully staffed with six monitors and one Office Technician (OT). The senior probation monitor will be retiring, with his last day being June 27, 2013. This employee has been with the BRN for 20 years. The remaining 5 monitors will have an increase in cases from 121 per monitor to approximately 146 cases per monitor until a replacement can be hired.

One of the Probation Monitors is now working 100% of the time with the Breeze project while the Probation Manager and another Monitor is absorbing her case load.

One discipline analyst continues to work on the Breeze project full time; therefore, this workload is absorbed by the manager.

The Discipline Unit is fully staffed with 5 case analysts, 2 legal support analysts, 1 cite and fine analyst and 2 OTs.

The Discipline and Probation Programs lose 160 hours per month of staff time due to state mandated furloughs.

Program – Discipline

Discipline will continue to audit charges from the Attorney General's (AG) offices to determine if the BRN is being charged appropriately. Our BRN research analysts also review AG charges seeking out anomalies for review.

The total amount of open discipline cases are 1,900 with an average case load per analyst at 380. There are approximately 1,983 cases at the AG's office.

The Legal Support Analyst started preparing default decisions for the Sacramento Office effective October 1, 2012. The Legal Support Analysts have been working under the direction of DCA Legal Counsel to prepare default decisions for the Oakland and San Francisco AG Offices for approximately two years. We have contacted the AG's office to begin processing default decisions for the LA office and we await a response.

Our Legal Support Analyst and staff have been busy processing Decisions. For fiscal year 2013 (July 1, 2012 through April 14, 2013):

Decisions Adopted by Board	941
Pending Processing by legal support staff	30
Accusations served	826

Staff continues to increase its usage of citation and fine as a constructive method to inform licensees and applicants of violations which do not rise to the level of formal disciplinary action.

The BRN continues to issue citations for address change violations pursuant to the California Code of Regulations §1409.1. To date we have ordered \$27,700 for failure to update address change citations. The BRN website was updated with a reminder of the address change requirement.

We have issued more citations and received more payments than any time in BRN history.

Citation information below reflects the work for fiscal year 2013 (July 1, 2012 through April 14, 2013).

Number of citations issued	584
Total fines ordered	\$238,075.00
Fines paid (amounts include payments from fines issued in prior fiscal year)	\$186,752.00
Citations pending issuance	550

The Discipline Unit continues to work on the NURSIS discipline data comparison project (SCRUB). The status of the documents reviewed:

Referred to the Attorney General	687
Pleadings Received	559
Default Decisions Effective	247
Stipulated Decisions Effective	170
Referred to Cite and Fine	65
Closed Without Action (Action taken by CA (prior to 2000) but not reported to Nursys or information approved at time of licensure)	927

Program – Probation

The case load per probation monitor is approximately 121.

Probation staff will participate in Webinar training on May 7th, provided free by Firstlab. This training will include information on drug screen collection, testing, and result interpretation.

AG Costs:

As of April 8, 2013, the BRN has expended \$1,381,170 at the AG's office on the NURSIS SCRUB cases.

Statistics - Discipline

Please review additional statistical information which can be found under item 9.3.

Statistics – Probation

Below are the statistics for the Probation program from July 1, 2012 to April 19, 2013

Probation Data	Numbers	% of Active
Male	194	26%
Female	537	73%
Chemical Dependency	367	50%
Practice Case	212	28%
Mental Health	1	>1%
Conviction	151	20%
Advanced Certificates	74	10%
Southern California	379	52%
Northern California	352	48%
Pending with AG/Board	80	11%
License Revoked	26	3%
License Surrendered	69	9%
Terminated	6	>1%
Completed	53	7%
Active in-state probationers	731	
Completed/Revoked/Terminated/ Surrendered	154	
Tolled Probationers	224	

NEXT STEP:

Follow directions given by committee and/or board.
Regain ability to prepare all default decisions.

FINANCIAL IMPACT, IF ANY:

AG's budget line item will be closely monitored.
Updates will be provided at each DDC meeting for
review and possible action.

PERSON TO CONTACT:

Beth Scott, Deputy Chief of Discipline, Probation, and
Diversion
(916) 574-8187

BOARD OF REGISTERED NURSING
Diversion/Discipline Committee
Agenda Item Summary

AGENDA ITEM: 9.3

DATE: May 8, 2013

ACTION REQUESTED: Information Only: Enforcement Division Statistics

REQUESTED BY: Stacie Berumen, Assistant Executive Officer

BACKGROUND:

Attached you will find statistics for the Enforcement Division. Please review the information provided.

NEXT STEP: Updates will be provided to the committee and board at each meeting. Follow directions given by committee and/or board.

FINANCIAL IMPLICATION, IF ANY: None at this time

PERSON TO CONTACT: Kathy Hodge, Deputy Chief of Complaint Intake and Investigations
(916) 574-7678

Beth Scott, Deputy Chief of Discipline, Probation and Diversion
(916) 574-8187

BOARD OF REGISTERED NURSING
ENFORCEMENT MEASURES
FOR ALL IDENTIFIERS
07/01/2012 THRU 03/31/2013

COMPLAINT INTAKE

COMPLAINTS	JUL-12	AUG-12	SEP-12	OCT-12	NOV-12	DEC-12	JAN-13	FEB-13	MAR-13	YTD
RECEIVED	158	401	309	204	150	197	145	220	157	1941
CLOSED W/O INV ASSIGNMENT	32	44	26	47	52	29	40	39	52	361
ASSIGNED FOR INVESTIGATION	101	349	299	185	154	112	149	118	171	1638
AVG DAYS TO CLOSE OR ASSIGN	22	6	10	48	20	10	39	30	21	21
PENDING	160	169	153	125	69	125	81	143	77	77
CONVICTIONS/ARREST REPORTS	JUL-12	AUG-12	SEP-12	OCT-12	NOV-12	DEC-12	JAN-13	FEB-13	MAR-13	YTD
RECEIVED	511	406	360	400	382	506	436	396	387	3784
CLSD/ASSGND FOR INVESTIGATION	497	338	401	399	421	475	452	418	399	3800
AVG DAYS TO CLOSE OR ASSIGN	4	8	9	14	10	5	14	7	9	9
PENDING	85	153	112	113	74	105	89	67	55	55
TOTAL INTAKE	JUL-12	AUG-12	SEP-12	OCT-12	NOV-12	DEC-12	JAN-13	FEB-13	MAR-13	YTD
RECEIVED	669	807	669	604	532	703	581	616	544	5725
CLOSED W/O INV ASSIGNMENT	50	49	33	65	61	40	53	48	63	462
ASSIGNED FOR INVESTIGATION	580	682	693	566	566	576	588	527	559	5337
AVG DAYS TO CLOSE OR ASSIGN	8	7	10	27	13	6	21	13	13	13
PENDING	245	322	265	238	143	230	170	210	132	132

BOARD OF REGISTERED NURSING
ENFORCEMENT MEASURES
FOR ALL IDENTIFIERS
07/01/2012 THRU 03/31/2013

INVESTIGATIONS

DESK INVESTIGATIONS	JUL-12	AUG-12	SEP-12	OCT-12	NOV-12	DEC-12	JAN-13	FEB-13	MAR-13	YTD
ASSIGNMENTS	581	679	694	565	565	576	591	527	561	5339
CLOSED	639	679	670	814	693	621	609	575	676	5976
AVERAGE DAYS TO CLOSE	159	137	146	140	127	130	105	128	120	133
PENDING	3587	3514	3485	3126	2934	2838	2774	2688	2512	2512
FIELD INVESTIGATIONS:NON-SWORN	JUL-12	AUG-12	SEP-12	OCT-12	NOV-12	DEC-12	JAN-13	FEB-13	MAR-13	YTD
ASSIGNMENTS	8	23	30	44	15	11	24	16	34	205
CLOSED	14	2	12	10	19	16	33	21	25	152
AVERAGE DAYS TO CLOSE	988	766	694	726	634	710	839	778	701	763
PENDING	460	480	498	531	527	522	484	476	484	484
FIELD INVESTIGATIONS:SWORN	JUL-12	AUG-12	SEP-12	OCT-12	NOV-12	DEC-12	JAN-13	FEB-13	MAR-13	YTD
ASSIGNMENTS	48	53	22	67	49	40	48	27	27	381
CLOSED	78	61	72	72	68	68	54	62	69	604
AVERAGE DAYS TO CLOSE	642	604	575	636	697	568	554	541	592	603
PENDING	809	802	752	748	730	702	696	659	616	616
ALL INVESTIGATIONS	JUL-12	AUG-12	SEP-12	OCT-12	NOV-12	DEC-12	JAN-13	FEB-13	MAR-13	YTD
FIRST ASSIGNMENTS	581	681	694	565	566	576	591	528	561	5343
CLOSED	731	742	754	896	780	705	696	658	770	6732
AVERAGE DAYS TO CLOSE	227	177	196	187	189	185	175	188	181	189
PENDING	4856	4796	4735	4405	4191	4062	3954	3823	3612	3612
ALL INVESTIGATIONS AGING	JUL-12	AUG-12	SEP-12	OCT-12	NOV-12	DEC-12	JAN-13	FEB-13	MAR-13	YTD
UP TO 90 DAYS	402	417	413	471	417	386	438	391	466	3801
91 TO 180 DAYS	60	90	101	145	135	89	54	49	48	771
181 DAYS TO 1 YEAR	94	98	68	126	81	84	69	82	110	812
1 TO 2 YEARS	122	93	124	104	112	109	91	101	104	960
2 TO 3 YEARS	37	41	40	32	25	29	36	25	26	291
OVER 3 YEARS	16	3	8	17	10	8	8	10	16	96
CLOSED W/O DISCIPLINE REFERRAL	JUL-12	AUG-12	SEP-12	OCT-12	NOV-12	DEC-12	JAN-13	FEB-13	MAR-13	YTD
CLOSED	531	552	546	655	564	511	544	505	610	5018
AVERAGE DAYS TO CLOSE	163	134	136	142	143	133	129	144	126	139

BOARD OF REGISTERED NURSING
ENFORCEMENT MEASURES
FOR ALL IDENTIFIERS
07/01/2012 THRU 03/31/2013

ENFORCEMENT ACTIONS

AG CASES	JUL-12	AUG-12	SEP-12	OCT-12	NOV-12	DEC-12	JAN-13	FEB-13	MAR-13	YTD
AG CASES INITIATED	145	146	166	194	177	157	115	115	129	1344
AG CASES PENDING	1526	1490	1562	1679	1768	1852	1873	1942	1945	1945
SOIs/ACCUSATIONS	JUL-12	AUG-12	SEP-12	OCT-12	NOV-12	DEC-12	JAN-13	FEB-13	MAR-13	YTD
SOIs FILED	13	13	7	18	10	15	11	6	13	106
ACCUSATIONS FILED	71	48	75	107	80	87	59	84	153	764
SOI DECISIONS/STIPS	JUL-12	AUG-12	SEP-12	OCT-12	NOV-12	DEC-12	JAN-13	FEB-13	MAR-13	YTD
PROP/DEFLT DECISIONS	8	9	4	1	3	4	10	1	6	46
STIPULATIONS	0	14	7	10	7	2	5	1	4	50
ACC DECISIONS/STIPS	JUL-12	AUG-12	SEP-12	OCT-12	NOV-12	DEC-12	JAN-13	FEB-13	MAR-13	YTD
PROP/DEFLT DECISIONS	35	74	14	18	15	21	40	15	49	281
STIPULATIONS	47	56	57	26	48	41	32	18	48	373
SOI DISCIPLINARY ORDERS	JUL-12	AUG-12	SEP-12	OCT-12	NOV-12	DEC-12	JAN-13	FEB-13	MAR-13	YTD
SOI FINAL ORDERS (DEC/STIPS)	8	23	11	11	10	6	15	2	10	96
AVERAGE DAYS TO COMPLETE	611	539	549	513	593	574	592	499	570	562
ACC DISCIPLINARY ORDERS	JUL-12	AUG-12	SEP-12	OCT-12	NOV-12	DEC-12	JAN-13	FEB-13	MAR-13	YTD
ACC FINAL ORDERS (DEC/STIPS)	82	130	71	44	63	62	72	33	97	654
AVERAGE DAYS TO COMPLETE	757	728	864	829	826	734	809	613	819	780
TOTAL DISCIPLINARY ORDERS	JUL-12	AUG-12	SEP-12	OCT-12	NOV-12	DEC-12	JAN-13	FEB-13	MAR-13	YTD
TOTAL FINAL ORDERS (DEC/STIPS)	90	153	82	55	73	68	87	35	107	750
TOTAL AVERAGE DAYS TO COMPLETE	744	700	822	766	794	720	772	607	796	752
TOTAL ORDERS AGING	JUL-12	AUG-12	SEP-12	OCT-12	NOV-12	DEC-12	JAN-13	FEB-13	MAR-13	YTD
UP TO 90 DAYS	0	0	0	0	0	0	0	0	0	0
91 TO 180 DAYS	0	0	0	0	0	0	1	0	0	1
181 DAYS TO 1 YEAR	5	12	3	7	8	3	7	8	10	63
1 TO 2 YEARS	50	90	35	21	29	39	42	17	52	375
2 TO 3 YEARS	24	30	30	15	21	20	26	10	23	199
OVER 3 YEARS	11	21	14	12	15	6	11	0	22	112
SOIs WDRWN DSMSSD DCLND	JUL-12	AUG-12	SEP-12	OCT-12	NOV-12	DEC-12	JAN-13	FEB-13	MAR-13	YTD
SOIs WITHDRAWN	0	1	1	3	0	1	0	0	0	6
SOIs DISMISSED	0	0	0	0	0	0	0	0	0	0
SOIs DECLINED	0	0	0	0	0	0	0	0	0	0
AVERAGE DAYS TO COMPLETE	0	232	333	474	0	679	0	0	0	444
ACCUSATIONS WDRWN DSMSSD DCLND	JUL-12	AUG-12	SEP-12	OCT-12	NOV-12	DEC-12	JAN-13	FEB-13	MAR-13	YTD
ACCUSATIONS WITHDRAWN	0	2	1	2	0	0	2	1	1	9
ACCUSATIONS DISMISSED	0	0	0	1	0	0	0	0	3	4
ACCUSATIONS DECLINED	1	1	5	8	4	3	1	4	4	31
AVERAGE DAYS TO COMPLETE	901	1014	563	496	550	648	854	863	881	701

NO DISCIPLINARY ACTION	JUL-12	AUG-12	SEP-12	OCT-12	NOV-12	DEC-12	JAN-13	FEB-13	MAR-13	YTD
CLOSED W/O DISCIPLINARY ACTION	1	2	0	5	7	0	1	1	6	23
AVERAGE DAYS TO COMPLETE	51	437	0	402	355	0	61	4	419	348
 CITATIONS	 JUL-12	 AUG-12	 SEP-12	 OCT-12	 NOV-12	 DEC-12	 JAN-13	 FEB-13	 MAR-13	 YTD
FINAL CITATIONS	37	77	95	115	75	18	26	45	91	579
AVERAGE DAYS TO COMPLETE	571	258	167	152	177	652	364	595	486	310
 OTHER LEGAL ACTIONS	 JUL-12	 AUG-12	 SEP-12	 OCT-12	 NOV-12	 DEC-12	 JAN-13	 FEB-13	 MAR-13	 YTD
INTERIM SUSP ORDERS ISSUED	0	0	0	2	0	0	0	0	0	2
PC 23 ORDERS ISSUED	1	3	0	1	1	1	0	2	0	9

BOARD OF REGISTERED NURSING
PERFORMANCE MEASURES
FOR ALL IDENTIFIERS
07/01/2012 THRU 03/31/2013

PERFORMANCE MEASURES

	JUL-12	AUG-12	SEP-12	OCT-12	NOV-12	DEC-12	JAN-13	FEB-13	MAR-13	YTD
PM1: COMPLAINTS VOLUME	158	401	309	204	150	197	145	220	157	1941
PM1: CONV/ARREST RPRTS VOLUME	511	406	360	400	382	506	436	396	387	3784
PM2: CYCLE TIME-INTAKE	8	7	10	27	13	6	21	13	13	13
PM3: CYCLE TIME-NO DISCIPLINE	163	134	136	142	143	133	129	144	126	139
PM4: CYCLE TIME-DISCIPLINE	736	697	822	736	756	720	764	590	776	740

PM1: COMPLAINTS VOLUME - PM1: CONV/ARREST RPRTS VOLUME

Number of Complaints and Convictions/Arrest Orders Received within the specified time period.

PM2: CYCLE TIME-INTAKE

Average Number of Days to complete Complaint Intake during the specified time period.

PM3: CYCLE TIME-NO DISCIPLINE

Average Number of Days to complete Complaint Intake and Investigation steps of the Enforcement process for Closed Complaints not resulting in Formal Discipline during the specified time period.

PM4: CYCLE TIME-DISCIPLINE

Average Number of Days to complete the Enforcement process (Complaint Intake, Investigation, and Formal Discipline steps) for Cases Closed which had gone to the Formal Discipline step during the specified time period.

CALIFORNIA BOARD OF REGISTERED NURSING ENFORCEMENT STATISTICS

March 31, 2013

STATISTICAL DESCRIPTION	2008-09	2009-10	2010-11	2011-12	2012-13*	Projected FY 2012-13
Complaints Received	5,794	7,483	7,977	7,844	5,725	7,633
Consumer Complaints	3,323	2,190	3,063	2,735	1,941	2,588
Convictions/Arrests	2,471	5,293	4,914	5,109	3,784	5,045
Referred to Diversion Program	400	604	368	1,053	753	1,004
Division of Investigation (Sworn)-Assigned	582	484	835	693	381	508
Division of Investigation Closed	748	1,015	716	648	604	805
Division of Investigation Pending	1,170	641	789	851	616	
BRN Investigations (Non Sworn)-Assigned		58	33	298	205	273
BRN Investigations Closed		14	53	27	152	203
BRN Investigations Pending		40	25	280	484	
BRN Desk Investigations Assigned	5,650	7,865	7,409	7,204	5,339	7,119
BRN Desk Investigations Closed	3,519	7,116	6,668	5,925	5,976	7,968
BRN Desk Investigations Pending	1,677	1,887	2,137	3,029	2,512	
Criminal Actions Filed	22	21	16	9	2	3
Total Cite and Fine Citations Issued	115	181	105	412	579	772
Referred to Attorney General	515	766	1,190	944	1,344	1,792
Cases Pending at Attorney General	692	838	1,198	1,448	1,906	
Petitions to Revoke Probation Filed	59	91	61	55	54	72
Accusations Filed	359	696	913	589	764	1,019
Statements of Issues Filed	14	13	52	132	106	141
Total Pleadings	432	800	1,026	776	924	1,232
Orders to Compel Examination (Sec. 820)	4	4	10	12	11	15
Interim Suspension Order	2	8	1	0	2	3
PC23	8	6	7	8	9	12
Applicant Disciplinary Actions:						
(a) License Denied	15	27	55	72	47	63
(b) License Issued on Probation	4	9	14	43	62	83
Total, Applicant Discipline	19	36	69	115	109	145
Licensee Disciplinary Actions:						
(a) Revocation	131	243	273	227	235	313
(b) Probation	139	176	267	225	217	289
(c) Suspension/Probation	6	1	6	3	1	1
(d) License Surrendered	79	92	155	128	140	187
(e) Public Reprimand/Reproval	8	12	37	79	59	79
(f) Decisions Other	5	2	5	3	2	3
Total, Licensee Discipline	368	526	743	665	654	872
Process Used for Discipline (licensees)						
(a) Administrative Hearing	56	58	102	121	88	117
(b) Default Decision	105	206	217	183	193	257
(c) Stipulation	207	262	424	361	373	497
Total	368	526	743	665	654	872

*Fiscal Year to Date

BOARD OF REGISTERED NURSING
Diversion/Discipline Committee
Agenda Item Summary

AGENDA ITEM: 9.4

DATE: May 8, 2013

ACTION REQUESTED: Information Only: Diversion Program Update

REQUESTED BY: Stacie Berumen, Assistant Executive Officer

BACKGROUND:

Program Update

The Diversion Program has diligently worked with the backlog of complaints. Thanks to the industrious work of the staff, they are now currently working on monthly complaints as they are received. The Diversion Evaluation Committee (DEC) members, however, continue to be challenged by travel claim processing through the CalATERS system. It is a cumbersome process for the members and takes extensive staff time to work in the system. Lengthy payment delays continue to occur. As a result several DEC members do not request travel reimbursement. Staff continues to work with members to complete the process.

On April 24, Carol Stanford, the Program Manager, along with Virginia Matthews, Maximus Director, Stephanie Trumm and Board staff conducted a presentation to several Deputy Attorneys General and legal staff at the Sacramento Attorney General's Office regarding nurses suffering from substance use disorders, mental illness and the Diversion Program. The presentation was well received. Several questions were answered to help the attorneys get a better understanding of substance abuse as it relates to substance use disorders, nursing and the Diversion Program. They indicated the information was so valuable that they would like to have the presenters return to provide additional training when their new attorneys are hired.

Contractor Update

Maximus has selected and hired a new clinical case manager. Details and specific information regarding the new employee will be provided at a later date.

Diversion Evaluation Committees (DEC)

There are currently four vacancies at this time: one public, one registered nurse, and two physician positions. Recruitment efforts continue.

Statistics

The Statistical Summary Report for February and March, 2013 is attached. As of March 30, 2013, there were 1,753 successful completions.

NEXT STEP:

None

FINANCIAL IMPLICATION, IF ANY:

None at this time.

PERSON TO CONTACT:

Carol Stanford, Diversion Program Manager
(916) 574-7616

**BOARD OF REGISTERED NURSING
DIVERSION PROGRAM
STATISTICAL SUMMARY
February 1, 2013 - March 31, 2013**

	CURRENT MONTHS	YEAR TO DATE (FY)	PROGRAM TO DATE
INTAKES COMPLETED	45	161	4,615
INTAKE INFORMATION			
Female	29	126	3,611
Male	16	35	977
Unknown	0	0	27
Average Age	30-49		
Most Common Worksite	Hospital		
Most Common Specialty	Critical Care		
Most Common Substance Abused	Alcohol/Vicodin		
PRESENTING PROBLEM AT INTAKE			
Substance Abuse (only)	21	73	2,949
Mental Illness (only)	2	6	153
Dual Diagnosis	22	77	1,461
Undetermined	0	5	52
REFERRAL TYPE*			
Board	36	131	3,335
Self	9	30	1,280
*May change after Intake			
ETHNICITY (IF KNOWN) AT INTAKE			
American Indian/Alaska Native	0	2	33
Asian/Asian Indian	1	8	100
African American	1	3	142
Hispanic	6	16	186
Native Hawaiian/Pacific Islander	1	1	20
Caucasian	36	129	3,803
Other	0	2	65
Not Reported	0	0	266
CLOSURES			
Successful Completion	17	84	1,753
Failure to Derive Benefit	0	2	117
Failure to Comply	1	9	947
Moved to Another State	0	0	51
Not Accepted by DEC	1	2	49
Voluntary Withdrawal Post-DEC	2	8	311
Voluntary Withdrawal Pre-DEC	7	14	457
Closed Public Risk	8	17	263
No Longer Eligible	0	3	13
Clinically Inappropriate	1	6	18
Client Expired	0	0	38
Sent to Board Pre-DEC	0	0	1
TOTAL CLOSURES	37	145	4,018
NUMBER OF PARTICIPANTS: 470 (as of March 31, 2013)			

BOARD OF REGISTERED NURSING
Diversion/Discipline Committee Meeting
Agenda Item Summary

AGENDA ITEM: 9.4.1

DATE: May 8, 2013

ACTION REQUESTED: Diversion Evaluation Committee Members

REQUESTED BY: Stacie Berumen, Assistant Executive Officer

BACKGROUND:

In accordance with B & P Code Section 2770.2, the Board of Registered Nursing is responsible for appointing persons to serve on the Diversion Evaluation Committees. Each Committee for the Diversion Program is composed of three registered nurses, a physician and a public member with expertise in substance use disorders and/or mental health.

REAPPOINTMENTS

Below are the names of candidates who are being recommended for reappointment to the Diversion Evaluation Committees (DEC). Their applications and résumés are attached. If appointed, their terms will expire June 30, 2017.

<u>NAME</u>	<u>TITLE</u>	<u>DEC</u>	<u>NO</u>
Cathy Horowitz	Nurse	Sacramento	1
Kathleen Coe	Nurse	Ontario	9
Anna Seiders	Nurse	Ontario	9

Below are the names of candidates who are being recommended for term extensions to the Diversion Evaluation Committees (DEC). Their applications and résumés are attached. If appointed, their terms will expire June 30, 2016.

<u>NAME</u>	<u>TITLE</u>	<u>DEC</u>	<u>NO</u>
Gordon Ogden	Nurse	Fresno	5
Janis Jones	Nurse	Palm Springs	6
Duane Anderson	Nurse	Burbank	8
Sara Cardiner	Nurse	Burbank	8

Below are the names of candidates who are being recommended for term extensions to the Diversion Evaluation Committees (DEC). Their applications and résumés are attached. If appointed, their terms will expire June 30, 2015.

<u>NAME</u>	<u>TITLE</u>	<u>DEC</u>	<u>NO</u>
Bobbie Leva	Nurse	Burbank	8
Rosemary Miller	Nurse	Oakland	13
Sharon Fritz	Nurse	Santa Ana	14

TRANSFER

Below is the name of the DEC member who is being recommended for a transfer from one DEC committee to another.

<u>NAME</u>	<u>TITLE</u>	<u>DEC</u>	<u>NO</u>
Scott Reiter	Physician	Los Angeles	3

NEXT STEP: Continue recruiting efforts

**FINANCIAL
IMPLICATIONS:** None

PERSON TO CONTACT: Carol Stanford, Diversion Program Manager
(916) 574-7616

BOARD OF REGISTERED NURSING
Diversion/Discipline Committee
Agenda Item Summary

AGENDA ITEM: 9.5

DATE: May 8, 2013

ACTION REQUESTED: Consideration of Enforcement-Related Regulation Proposals to Amend Title 16

- California Code of Regulations, Article 1, Section 1403, Delegation of Certain Functions
- California Code of Regulations, Article 2, Section 1410, Application
- California Code of Regulations, Article 4, Section 1441, Unprofessional Conduct
- California Code of Regulations, Article 4, Section 1443.6, Required Actions Against Registered Sex Offenders
- California Code of Regulations, Article 4, Section 1444.5, Disciplinary Guidelines

REQUESTED BY: Geri Nibbs, MN, RN
Nursing Education Consultant

BACKGROUND:

The Department of Consumer Affairs recommended that all boards adopt the DCA Consumer Protection Enforcement Initiative (CPEI). The goal of CPEI is to enhance the disciplinary process and reduce the timeframe for completion of cases to 12 – 18 months. In January 2011, the Board promulgated a regulatory proposal implementing elements of CPEI for which it had statutory authority. Because there was no Board for a period of time in the beginning of 2012, the final rulemaking file was not submitted to the Office of Administrative Law within the required one-year time frame, and the Board must re-notice the regulatory proposal.

INITIAL REGULATORY PROPOSAL: The initial regulatory proposal was comprised of the following changes:

Amend Section 1403 – Delegation of Certain Functions

Delegate to the Executive Officer the authority to approve settlement agreements for the revocation, surrender, or interim suspension of a license.

Amend Section 1410 – Application

Require an applicant to undergo an evaluation and/or examination if it appears the applicant may be unable to practice nursing safely due to mental and/or physical illness. The Board is required to pay for the examination.

Adopt Section 1441 – Unprofessional Conduct

Specify that “unprofessional conduct” also includes, but is not limited to: 1) including or attempting to include in civil settlement agreements provisions that prevent a person from contacting, cooperating with, or filing a complaint with the Board, or requiring that a person attempt to withdraw a complaint already filed with the Board; 2) failure to provide lawfully requested records that are under the licensee’s control; 3) failure to cooperate and participate in a Board investigation; 4) failure to report to the Board specified actions against the licensee such as indictment, arrest, or conviction; and 5) refusal or failure to comply with a court order mandating the release of records to the Board.

Adopt Section 1443.6 – Required Actions Against Registered Sex Offenders

If an applicant for licensure, licensee, or petitioner for reinstatement of a revoked license is required to register as a sex offender, the Board shall deny the application or revoke the license. Exceptions to the mandatory disciplinary action are specified.

Amend Section 1444.5 – Disciplinary Guidelines

Require that an Administrative Law Judge's proposed decision must be to revoke the license, if there is a finding of fact that the licensee: 1) has had "sexual contact," as defined, with a patient; or 2) has committed an act or been convicted of a sex offense, as specified. The proposed decision cannot contain an order staying the revocation.

MODIFIED PROPOSAL: After reconsideration of the proposal and taking into consideration public comments, the Board made modifications to the proposal and the modified language was noticed for 15-day public comment in July, 2011. The following modifications were made:

Section 1403 - Delegation of Certain Functions Added requirement that settlements approved by the Executive Officer be reported to the Board at regularly scheduled Board meetings.

Section 1410 - Application Deleted the requirement.

Section 1441 - Unprofessional Conduct Deleted subsections: (a) inclusion of gag clause in an agreement to settle a civil suit; (d)(1) failure to report indictment or information charging a felony against the licensee; and (d)(2) failure to report arrest of the licensee. Modified (b) specifying that the subsection did not apply to a licensee who does not have access to and control over the "documents," and changed "medical records" to "documents."

With respect to the "gag clause" language, the Committee should note that Business and Professions Code Section 143.5 (AB 2570, Stats 2012, Chap. 561) became effective January 1, 2013, and addresses this issue. The statute reads in pertinent part:

(a) No licensee who is regulated by a board, bureau, or program within the Department of Consumer Affairs, nor an entity or person acting as an authorized agent of a licensee, shall include or permit to be included a provision in an agreement to settle a civil dispute, whether the agreement is made before or after the commencement of a civil action, that prohibits the other party in that dispute from contacting, filing a complaint with, or cooperating with the department, board, bureau, or program within the Department of Consumer Affairs that regulates the licensee or that requires the other party to withdraw a complaint from the department, board, bureau, or program within the Department of Consumer Affairs that regulates the licensee. A provision of that nature is void as against public policy, and any licensee who includes or permits to be included a provision of that nature in a settlement agreement is subject to disciplinary action by the board, bureau, or program.

Section 1443.6 - Required Actions Against Registered Sex Offenders Deleted the section.

The Board determined that it wished to maintain its discretionary authority in such cases, acknowledging that the decision in the overwhelming majority of cases (98+%) would be license denial or revocation.

MODIFIED LANGUAGE AND PUBLIC COMMENTS: The modified regulatory proposal is attached. The initial changes are designated by single underline and ~~strikeout~~ and the modified language is designated by double underline and ~~strikeout~~. A summary of the public comments is also attached. The public comments for both the initial and modified regulatory proposals will be sent to Committee members under separate cover.

NEXT STEPS:

Place on Board agenda.

FISCAL IMPACT, IF ANY:

PERSON(S) TO CONTACT:

Geri Nibbs, MN, RN
Nursing Education Consultant
916-574-7682

MODIFIED TEXT

BOARD OF REGISTERED NURSING

Specific Language of Proposed Changes

Initial changes are designated by single underline and ~~strikeout~~ and the modified language is designated by double underline and ~~strikeout~~.

1403. Delegation of Certain Functions.

(a) The power and discretion conferred by law upon the board to receive and file accusations; issue notices of hearing, statements to respondent and statements of issues; receive and file notices of defense; determine the time and place of hearings under Section 11508 of the Government Code; issue subpoenas and subpoenas duces tecum; set and calendar cases for hearing and perform other functions necessary to the efficient dispatch of the business of the board in connection with proceedings under the provisions of Sections 11500 through 11528 of the Government Code, prior to the hearing of such proceedings; to approve settlement agreements for the revocation, surrender or interim suspension of a license; and the certification and delivery or mailing of copies of decisions under Section 11518 of said Code are hereby delegated to and conferred upon the executive officer, or, in his/her absence from the office of the board, his/her designee.

(b) All settlement agreements for the revocation, surrender, or interim suspension of a license approved pursuant to section 1403(a) shall be reported at regularly scheduled board meetings.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Section 2708, Business and Professions Code.

1410. Application.

(a) An application for a license as a registered nurse by examination shall be submitted on an application form provided by the board, and filed with the board at its office in Sacramento. An application shall be accompanied by the fee and such evidence, statements or documents as therein required including evidence of eligibility to take the examination. The applicant shall submit an additional application and fee for the examination to the board or to its examination contractor, as directed by the board. ~~The Bboard~~ shall provide the contractor's application to the applicant. No license shall be issued without a complete transcript on file indicating successful completion of the courses prescribed by the board for licensure or documentation deemed equivalent by the ~~Bboard~~.

(b) An application for a license as a registered nurse without examination under the provisions of Section 2732.1 (b) of the code shall be submitted on an application form prescribed and provided by the board, accompanied by the appropriate fee and by such evidence, statements, or documents as therein required, and filed with the board at its office in Sacramento.

(c) The applicant shall be notified in writing of the results of the evaluation of his/her application for license if the application is rejected.

~~(d) In addition to any other requirements for licensure, whenever it appears that an applicant for a license may be unable to practice nursing safely because the applicant's ability to practice may be impaired due to mental illness, or physical illness affecting competency, the board may require the applicant to be examined by one or more physicians and surgeons or psychologists designated by the board. The board shall pay the full cost of such examination. An applicant's failure to comply with the requirement shall render his or her application incomplete.~~

~~The report of the evaluation shall be made available to the applicant.~~

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 480, ~~820~~, 2729, 2732.1, 2733, 2736, 2736.5, 2736.6, 2737 and 2815, Business and Professions Code.

1441. Unprofessional Conduct.

In addition to the conduct described in Section 2761 (a) of the Code, "unprofessional conduct" also includes, but is not limited to, the following:

~~(a) Including or permitting to be included any of the following provisions in an agreement to settle a civil dispute arising from the licensee's practice, whether the agreement is made before or after the filing of an action:~~

~~(1) A provision that prohibits another party to the dispute from contacting, cooperating, or filing a complaint with the board.~~

~~(2) A provision that requires another party to the dispute to attempt to withdraw a complaint the party has filed with the board.~~

~~(b)~~ (a) Failure to provide to the board, as directed, lawfully requested copies of documents within 15 days of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause, including but not limited to, physical inability to access the records in the time allowed due to illness or travel. This subsection shall not apply to a licensee who does not have access to, and control over, ~~medical records~~ the documents.

~~(c)~~ (b) Failure to cooperate and participate in any board investigation pending against the licensee. This subsection shall not be construed to deprive a licensee of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subsection shall not be construed to require a licensee to cooperate with a request that would require the licensee to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the licensee's practice. Any exercise by a licensee of any constitutional or statutory privilege shall not be used against the licensee in a regulatory or disciplinary proceeding against the licensee.

~~(d)~~ (c) Failure to report to the board, within 30 days, any of the following:

~~(1) The bringing of an indictment or information charging a felony against the licensee.~~

~~(2) The arrest of the licensee.~~

~~(3)~~ (1) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

~~(4)~~ (2) Any disciplinary action taken by another licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

~~(e)~~ (d) Failure or refusal to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board.

NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 2761 and 2765, Business and Professions Code.

1443.6. Required Actions Against Registered Sex Offenders.

~~(a) Except as otherwise provided, if an individual is required to register as a sex offender pursuant to Section 290 of the Penal Code, or the equivalent in another state or territory, or military or federal law, the board shall:~~

~~(1) Deny an application by the individual for licensure, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.~~

~~(2) Promptly revoke the license of the individual, in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not stay the revocation nor place the license on probation.~~

~~(3) Deny any petition to reinstate or reissue the individual's license.~~

~~(b) This section shall not apply to any of the following:~~

~~(1) An individual who has been relieved under Section 290.5 of the Penal Code of his or her duty to register as a sex offender, or whose duty to register has otherwise been formally terminated under California law or the law of the jurisdiction that required registration.~~

~~(2) An individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code; provided, however, that nothing in this paragraph shall prohibit the board from exercising its discretion to discipline a licensee under any other provision of state law based upon the licensee's conviction under Section 314 of the Penal Code.~~

~~(3) Any administrative proceeding that is fully adjudicated prior to the effective date of this regulation. A petition for reinstatement of a revoked or surrendered license shall be considered a new proceeding for purposes of this paragraph, and the prohibition in subsection (a) against reinstating a license shall govern.~~

~~NOTE: Authority cited: Section 2715, Business and Professions Code. Reference: Sections 480, 2736, 2750, 2759, and 2760.1, Business and Professions Code; and Section 11425.50, Government Code.~~

1444.5. Disciplinary Guidelines.

In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et seq.), the Board shall consider the disciplinary guidelines entitled: "Recommended Guidelines for Disciplinary Orders and Conditions of Probation" (10/02), which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the board, in its sole discretion, determines that the facts of the particular case warrant such a deviation -for example, the presence of mitigating factors; the age of the case; evidentiary problems.

Notwithstanding the disciplinary guidelines, any proposed decision issued in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any acts of sexual contact, as defined in subdivision (c) of Section 729 of the Code, with a patient, or has committed an act or been convicted of a sex offense as defined in Section 44010 of the Education Code, shall contain an order revoking the license. The proposed decision shall not contain an order staying the revocation of the license.

NOTE: Authority cited: Section 2715, Business and Professions Code; and Section 11400.20, Government Code. Reference: Sections 726, 729, 2750, 2759, 2761 and 2762, Business and Professions Code; Section 44010, Education Code; and Sections 11400.20 and 11425.50(e), Government Code.

SUMMARY OF PUBLIC COMMENTS INITIAL REGULATORY PROPOSAL

The public comment period for the Board's Enforcement Regulation Proposals ended March 3, 2011. Twenty-four written responses were received, and copies of the responses were sent to Board members. The respondents consisted of 17 individuals and five organizations: American Nurses Association-California (ANA-C); California Nurses Association (CNA), California Student Nurses Association (CSNA); CSNA– Fresno; and the Center for Public Interest Law (CPIL). No one testified at the public hearing. CPIL supports all the proposed changes. ANA-C supports all the proposed changes, except the mandatory reporting of arrests, which was opposed by 22 of the other respondents. CNA continues to seek clarification on the Board's authority for enactment of the proposed regulatory action as well as rationale for the selection of these specific elements of the Consumer Protection Enforcement Initiative. They opposed the new requirement for applicants and the reporting of arrests and charges, and opposed, unless amended, delegating specified functions to the Executive Officer and the requirement to comply with records requests. CNA and two other respondents recommended amendments. Following is a summary of the recommended amendments.

Amend Section 1403 - Delegation of Certain Functions

Delegate to the Executive Officer the authority to approve settlement agreements for the revocation, surrender, or interim suspension of a license.

Recommended amendments:

1. Require that any actions taken pursuant to this new authority be publicly reported to the Board.
2. Clarify in proposed regulations which types of settlement cases will be retained under the current voting process by the Board members.
3. Change the words "settlement agreement for interim suspension" to words that can be easily distinguished from the order obtained pursuant to Business and Professions Code (BPC), Section 494.
4. Change "in his/her absence from office" to "when unavailable" or other words that convey the circumstances when the Executive Officer is not capable of taking action.

Section 1410 – Application

Require an applicant for licensure to undergo an evaluation and/or examination if it appears the applicant may be unable to practice nursing safely due to mental and/or physical illness. The Board is required to pay for the examination.

Recommended amendments:

1. Change the language to make it consistent with the authority provided in Section 820 of the BPC, i.e., an applicant's failure to comply is grounds for denial of license.
2. Add and clarify the process to be used to require the applicant to take an examination.
3. Clarify and add the disciplinary options applied to applicants, e.g., license denial, conditional (probationary license), just as in BPC, Section 822, for licensees.
4. Delete based on lack of statutory authority.

Section 1441 - Unprofessional Conduct

Defines specified acts as unprofessional conduct.

(a) Including or permitting "gag clauses" to be included in an agreement to settle a civil law suit.

Recommended amendment: Delete based on lack of statutory authority. The term "civil dispute" is unclear.

(b) Failure to provide lawfully requested copies of documents. The Section does not apply to a licensee who does not have access to or control over, medical records.

Recommended amendment: Change “medical records” to “records.”

(d)(1) Report indictment or information charging a felony.

Recommended amendment: Delete based on lack of fairness, punitive, and process issues.

(d)(2) Report arrest to the board.

Recommended amendment: Delete based on lack of fairness, punitive, and process issues.

Section 1443.6-Required Actions Against Registered Sex Offenders

Sets forth the disciplinary action to be taken by the Board if an applicant for licensure, licensee, or petitioner for reinstatement of a revoked license is required to register as a sex offender, and specifies the circumstances in which the Section does not apply. Subsection (b)(2) exempts from the provision of this regulation an individual who is required to register as a sex offender pursuant to Section 290 of the Penal Code solely because of a misdemeanor conviction under Section 314 of the Penal Code (indecent exposure.)

Recommended amendments:

1. Delete (b)(2) and/or provide clarification for the exemption.
2. Introduce additional proposed regulations with absolute bars to licensure for greater preemptive and preventative public protection.

SUMMARY OF PUBLIC COMMENTS PROPOSED MODIFIED TEXT

The public comment period for the proposed modified text ended July 27, 2011, and three responses were received:

Department of Consumer Affairs: The BRN should maintain the deleted provisions because they represent a valuable addition to the BRN’s available techniques to monitor licensees and protect California’s constituents. Rationale was provided for inclusion of the deleted items.

Center for Public Interest Law: Requested reconsideration of each of the deleted items and presented: “(1) the precedents at other health care boards from which BRN is departing; (2) additional pending precedents in the form of other health care boards which are currently considering the addition of the regulations that BRN now proposes to delete from its rulemaking package; (3) a compilation of the comments made to the BRN during the rulemaking proceedings; and (4) argument why each deleted provision should be added back into the rulemaking package.”

Consumer – Elliot Hochberg

Section 1410 – Application Noted that mental-health related language already exists in the Disciplinary Guidelines’ Policy Statement on Denial of Licensure.” Recommend enhancing enforcement- related regulation and deleting language here. Requirement for physical examination could be added.

Section 1443.6 – Required Action Against Registered Sex Offenders: Recommended maintain the language, but move to 1444.5.

Other comments/recommendations were included by respondent, but were not responsive to the proposed modifications.